

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05cv11095NG

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THOMAS ROY and \*  
LISA ROY \*  
v. \*

DELAWARE NORTH \*  
COMPANIES, INC. – BOSTON \*  
\*\*\*\*\*

**MOTION TO COMPEL**

Now comes the plaintiff in the above referenced matter and respectfully moves this Honorable Court to compel Montgomery CONE, Inc., to produce the following records:

(1) All maintenance and repair records of all escalators at Fleet Center, One Fleet Center, Boston, Massachusetts for the period of January 1, 2003 through December 31, 2004 relative to all escalators that serviced Level 4 and/or the “Premium” area at the Fleet Center.

(2) All sales slips, invoices, purchase orders, sales calls, bills or evidence of payment relating to all service calls, repairs or alterations to all escalators servicing Level 4 and/or the “Premium” area for the Fleet Center for the period of January 1, 2003 through December 31, 2004.

As grounds for this motion plaintiff states as follows:

(1) That on or about March 10, 2004 the plaintiff suffered injuries when they fell while attempting to descend an escalator at the Fleet Center.

(2) That the defendant answered in discovery that any maintenance records concerning the escalator at issue were in the possession, custody or control of Montgomery CONE, Inc., the entity with whom it contacted to maintain and repair the subject escalator.

(3) That on or about December 14, 2005 Montgomery CONE, Inc., was served with a subpoena to produce various records. A copy of the subpoena is attached hereto as Exhibit A. Good service was obtained on Montgomery CONE, Inc., as referenced on December 14, 2005.

The subpoena was returnable on January 30, 2006. As of this date **no** documents have been received.

WHEREFORE, plaintiffs pray that this Honorable Court order Montgomery CONE, Inc., to provide the requested records within twenty-one (21) days of the date of the allowance of this motion.

Dated: February 3, 2006

The Plaintiffs,  
Thomas Roy and Lisa Roy,  
By their attorney,  
JOSEPH G. ABROMOVITZ, P.C.

s/Joseph G. Abromovitz

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Joseph G. Abromovitz  
BBO#: 011420  
858 Washington Street  
Third Floor  
Dedham, MA 02026  
Phone: (781) 329-1080

**CERTIFICATE OF SERVICE**

I, Joseph G. Abromovitz, counsel for the plaintiff, hereby certify that on this 3<sup>rd</sup> day of February, 2006 I served a copy of the within document via postage prepaid mail to the following counsel of record:

Lawrence F. Boyle. Esq.  
MORRISON MAHONEY LLP  
250 Summer Street  
Boston, MA 02210

s/Joseph G. Abromovitz

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Joseph G. Abromovitz

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THOMAS ROY and  
LISA ROY

v.

DELAWARE NORTH  
COMPANIES, INC. - BOSTON

\*\*\*\*\*

TO: Keeper of the Records  
Montgomery CONE, Inc.  
55 Brooks Drive  
Braintree, MA 02184

You are hereby commanded in the name of The Commonwealth of  
Massachusetts, in accordance with the provisions of Rules 30(b)(6) and 45 of the Mass.

Rules of Civ. P. to designate one or more witnesses to appear and testify on behalf of

Thomas Roy before a Notary Public of the Commonwealth, at the office of JOSEPH G.

ABROMOVITZ, P.C., 858 Washington Street, Boston, MA on **Monday, January 30, 2006**

at 10:00 o'clock A.M. and to provide testimony relative to the following areas:

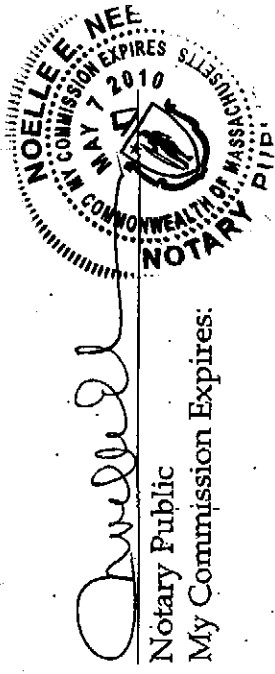
1. All maintenance and repair records of all escalators at Fleet Center, One Fleet Center, Boston, Massachusetts for the period of January 1, 2003 through December 31, 2004 relative to all escalators that serviced Level 4 and/or the "Premium" area at the Fleet Center.
2. All sales slips, invoices, purchase orders, sales calls, bills or evidence of payment relating to all service calls, repairs or alterations to all escalators servicing Level 4

and/or the "Premium" area for the Fleet Center for the period of January 1, 2003 through December 31, 2004.

Please note that the Keeper of the Records can comply with this deposition by mailing **CERTIFIED** copies of all requested documents.

Hereof fail not, as you will answer your default under the pains and penalties in the law in that behalf made and provided.

DATED AT BOSTON THE 9<sup>th</sup> DAY OF December, A.D. 2005



Prepared by:

Law Office of Joseph G. Abromovitz, P.C.  
858 Washington Street, Third Floor  
Dedham, MA 02026  
Phone: (781) 329-1080

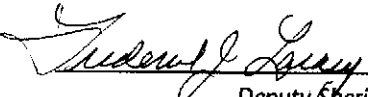


Norfolk County Sheriff's Department P.O. Box 859215 Braintree, MA 02185-9215 / Tel. # (781) 326-1787  
Norfolk, ss.

December 20, 2005

I hereby certify and return that on 12/14/2005 at 1:10PM I served a true and attested copy of the deposition subpoena with notice of taking deposition in this action in the following manner: To wit, by delivering in hand to Patty Rock, , person in charge at the time of service for Montgomery CONE, Inc, at one NewBoston Drive, Canton, MA 02024. Witness Fee (\$9.00), Notary Fee (\$3.00), Basic Service Fee (\$30.00), Copies-Attestation (\$5.00), Conveyance (\$1.50), Postage and Handling (\$1.00), Travel (\$7.68) Total Charges \$57.18

Deputy Sheriff William M Blake

  
Deputy Sheriff